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OFFICE OF PETITIONS

In re Application of :
Burford, et al. :
Application No. 10/706,480 : DECISION DISMISSING PETITION
Filed: October 30, 2003 :
Attorney Docket No. 038190/268379 :

This is a decision on the "Request for Reconsideration of Petition To Grant Filing Date And To Refund Petition Fee", filed July 23, 2004, requesting that the above-identified application be accorded a filing date of October 27, 2003.

The request is **GRANTED**.

Application papers in the above-identified application were deposited on October 27, 2003. However, on March 29, 2004, the Initial Patent Examination Division mailed applicant a "Notice of Incomplete Nonprovisional Application." Applicants were notified that the application papers had not been accorded a filing date because the application was deposited without a specification. This Notice set a two month period for reply.

In response, on April 7, 2004, Applicants filed a petition to accord a filing date of October 27, 2003. Accompanying the petition was a copy of the application papers, including the specification. Applicants asserted that a complete application, including a specification, was filed on October 27, 2003. As proof thereof, applicants submitted: (1) a copy of the original application transmittal letter, bearing Express Mail Label No. EV 331608718 US, and itemizing the items allegedly filed with the

application, including 25 pages of specification; (2) a copy of the Express Mail label bearing Express Mail Label No. EV 331608718 US and a date-in of October 27, 2003; and (3) a copy of a postcard receipt, itemizing the application, but lacking a USPTO date stamp dated October 27, 2003. Petitioner pointed out that the Express mail package contained both the application filing and a Petition for License for Foreign Filing.

In a decision mailed on June 10, 2004, the petition was dismissed. Applicants were told they did not submit a proper postcard receipt evidencing a receipt date of October 27, 2003 (applicants' postcard receipt contained a stamp reading "RECEIVED OCT 30, 2003 LICENSING & REVIEW"). In addition, Applicants were cited to MPEP 513, which states that 37 CFR 1.10(e) can only be relied upon when an application was lost *in toto*.

However, upon further consideration, it is concluded that petitioner is not relying solely upon 37 CFR 1.10(e) to accord the application a filing date of October 27, 2003. Rather, petitioner is relying upon **both** the postcard receipt and 37 CFR 1.10(e). The postcard receipt establishes that the application was complete and received in the Office on October 30, 2003. Petitioner's Express Mail mailing label establishes that the application was deposited via Express Mail on October 27, 2003. Accordingly, petitioner is entitled to a filing date of October 27, 2003.

However, as the petition was necessitated by petitioner's filing error, the petition fee will not be refunded. Petitioner is directed to MPEP 501(III), which states in pertinent part:

Those who correspond with the USPTO are strongly encouraged not to include correspondence which will have to be directed to different areas (e.g., Patents and Trademarks) of the Office in a single envelope. Including multiple papers in a single envelope increases the likelihood that one or more of the papers will be delayed before reaching the appropriate area. Placing the papers in separately addressed envelopes will reduce the number of actions being performed by the USPTO unnecessarily or inappropriately.

The application file will be forwarded to the Office of Initial Patent Examination for further processing with a **filing date of October 27, 2003**, using the application papers submitted on October 27, 2003, together with the 25 pages of specification and the 6 sheets of drawings filed on April 7, 2004.

Telephone inquiries related to this decision should be directed to Petitions Attorney Cliff Congo at 571-272-3207.



Charles Pearson
Director
Office of Petitions